

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

DR. ERWIN D. JACKSON,

CASE NO. 2019 CA 000003

Plaintiff,

v.

CITY OF TALLAHASSEE,
a Florida municipal corporation;
JOHN DAILY,
in his official capacity as Mayor;
JEREMY MATLOW,
in his official capacity as City Commissioner;
CURTIS RICHARDSON,
in his official capacity as City Commissioner;
DIANE WILLIAMS-COX,
in her official capacity as City Commissioner;
ELAINE BRYANT,
in her purported official capacity as City
Commissioner,

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Dr. Erwin D. Jackson sues the City of Tallahassee and Tallahassee City Commission members, John Daily, Jeremy Matlow, Curtis Richardson, Dianne Williams-Cox, and Elaine Bryant and states:

I. Introduction

Florida's Government in the Sunshine Law, Section 286.011, Florida Statutes, requires that local governments conduct business in public at properly noticed meetings. In this case, the City of Tallahassee, acting through the Tallahassee City Commission, made decisions to whittle over 90 applications to fill a vacancy on the City Commission without holding a public meeting. Deciding which applicants to keep and which to reject for a public office is a quintessential governmental function. The public had a right to hear from the Commissioners about their

reasoning and to offer comment on the applicants before the City Commission narrowed the applicant pool to a small group of finalists. Excluding the public from this process was a Sunshine Law violation.

II. Jurisdiction and Venue

1. This Court has subject matter jurisdiction under Article V, Section 5 of the Florida Constitution.
2. Chapter 86, Florida Statutes, gives this Court jurisdiction to consider and issue the relief sought.
3. Venue for this action is proper in Leon County, Florida under Section 47.011, Florida Statutes.

III. Parties

4. Plaintiff Dr. Erwin D. Jackson (“Jackson”) is a resident of Tallahassee, Leon County, Florida and, as a citizen and member of the public, has rights under the Florida Constitution and Florida’s Government in the Sunshine Law.
5. Defendant City of Tallahassee (“City”) is a Florida municipal corporation. The Tallahassee City Charter vests the governing powers of the City in the Tallahassee City Commission (“Commission”), which consists of five electors of the City. The City and its Commission must follow Florida’s Government in the Sunshine Law.
6. John Daily is the Mayor of Tallahassee, a member of the Commission, and subject to Florida’s Government in the Sunshine Law. He is sued in his official capacity only.
7. Jeremy Matlow is a member of the Commission and subject to Florida’s Government in the Sunshine Law. He is sued in his official capacity only.
8. Curtis Richardson is a member of the Commission and subject to Florida’s Government in the Sunshine Law. He is sued in his official capacity only.

9. Dianne Williams-Cox is a member of the Commission and subject to Florida's Government in the Sunshine Law. She is sued in her official capacity only.

10. Elaine Bryant ("Bryant") is a purported member of the Commission and subject to Florida's Government in the Sunshine Law. She is sued in her official capacity only.

IV. General Allegations

11. This is an action to enforce Florida's Government in the Sunshine Law ("Sunshine Law"). § 286.011, Fla. Stat.; Art. I § 24(b), Fla. Const.

12. On December 12, 2018, Florida's Governor suspended Scott Maddox from the Commission after the federal government indicted him on public corruption charges. *See* Exhibit A (EO 18-365).

13. Maddox's suspension creates a temporary vacancy on the Commission during the period of suspension. § 112.51(3), Fla. Stat. The temporary vacancy is filled by temporary appointment in the same manner as a permanent appointment. *Id.* Florida law instructs municipalities to supply procedures for filling vacancies in their charters or by ordinance. § 166.031(6), Fla. Stat.

14. Section 14 of the City's Charter sets forth the procedure for filling a vacancy on the Commission:

Any vacancy in the commission, including the office of mayor, shall be filled by appointment until the following regular municipal election. Any vacancy occurring after the close of qualifying for a regular municipal election in which no candidate has qualified, shall be filled by appointment until the next regularly scheduled biennial election. The term of commissioners elected to fill a vacancy shall be for the unexpired term of the position vacated. Any vacancy resulting from a recall election shall be filled in the manner provided for in such cases by the Florida Statutes.

If any vacancy is not filled within twenty (20) days after it shall have occurred, an appointment to fill the vacancy shall be made by the governor.

See Exhibit B (Sec. 14, City Charter).

15. The City has adopted a method for implementing Section 14 of the Charter through Commission Policy 144 (“Policy”). *See* Exhibit C (Policy 144).

16. The Policy instructs the City’s Treasurer-Clerk to “place in newspaper(s) of general circulation *and* publish on talgov.com an advertisement seeking applications from Citizens interested in filling the open seat.” *Id.* (emphasis in original).

17. On December 12, 2012, the City published a press release announcing, “City Commission Seeking Applicants for Vacant Seat,” and put instructions on talgov.com explaining how to apply for the position. *See* Exhibit D (COT 12-12-18 Press Release). A diligent search did not find an advertisement in the *Tallahassee Democrat* or any other newspaper of general circulation within the city as the Policy instructs.

18. According to the City, 93 people applied for the vacant seat. *See* Exhibit E (COT Website Printout of Applicant names).¹

19. Without having a public meeting, each Commissioner weeded through the applications and prepared a list ranking the Commissioner’s top three applicants to fill the vacancy.

20. After receiving the rankings from the individual Commissioners, again without holding a public meeting, the City tabulated the overall results. It used a formula that gave each applicant one point when a Commissioner listed them on their top three list and prepared a short list of just nine applicants—whittled down from 93.

21. On December 26, 2018, the City published a press release entitled “City Commission Names Nine Finalists for Vacant Seat,” stating “Commissioners have completed their individual reviews of applications from citizens seeking to serve. Of the 93 applications submitted, nine

¹ The City’s website lists the names of 92 applicants rather than 93. To avoid confusion, this Complaint uses the number 93.

citizens are on the final list for the full commission to consider....” *See* Exhibit F (COT 12-26-18 Press Release).

22. At a special meeting on December 31, 2018, the Commission considered only the nine applicants on the short list. *See* Exhibit G (12-31-18 Special Meeting Agenda).

23. At the December 31st meeting, the Commission did not reconsider or reexamine its prior decision on the other 84 applicants and acted only upon the short list.

24. The Commission selected Bryant to fill the vacancy and swore her into office. *See* Exhibit H (COT 12-31-18 Press Release).

25. All conditions precedent to this action have been satisfied or waived.

26. All elements necessary to support a cause of action for declaratory relief are present in this case:

- a) There is a bona fide, actual, present need for a declaration that the City violated the Sunshine Law and the effect thereof;
- b) The declaration sought deals with a present controversy as to an ascertainable set of facts;
- c) The statutory and constitutional rights and privileges of Jackson are dependent upon the law applicable to the facts;
- d) Jackson and the Defendants have an actual, present question concerning the subject matter of this Complaint; and
- e) The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity but stems from an actual controversy.

27. Jackson has retained the undersigned law firm and agreed it should be paid a reasonable fee for its services.

COUNT I – SUNSHINE LAW VIOLATION

28. Jackson realleges and incorporates by reference the allegations contained in paragraphs 1 through 28, as if fully restated herein.

29. Under Florida law, “[a]ll meetings of any . . . municipal corporation . . . at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.” § 286.011(1), Fla. Stat.

30. The Florida Legislature enacted the Sunshine Law “in the public interest to protect the public from ‘closed door’ politics and, as such, the law must be broadly construed to effect its remedial and protective purpose.” *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983)

31. “Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire *decision-making process* that the legislature intended to affect by the [Sunshine Law]. This act is a declaration of public policy, the frustration of which constitutes irreparable injury to the public interest. Every step in the decision-making process, including the decision itself, is a necessary preliminary formal action. It follows that each such step constitutes an ‘official act,’ an indispensable requisite to ‘formal action,’ within the meaning of the act.” *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969) (emphasis in original), disapproved in part on other grounds, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985).

32. Decisions that effectively “screen,” “weed through,” or “short-list” submissions that a governing body later acts upon must occur in the sunshine. *See Marston*, 442 So. 2d at 938 (concluding the screening of applicants is an undisputed decision-making function); *Silver Express Company v. District Board of Lower Tribunal Trustees of Miami-Dade Community College*, 691 So. 2d 1099, 1100 (Fla. 3d DCA 1997) (finding a Sunshine Law violation where the “committee’s function was to weed through the various proposals, to determine which were

acceptable and to rank them accordingly”); *Leach-Wells v. City of Bradenton*, 734 So. 2d 1168 (Fla. 2d DCA 1999) (concluding the short-listing of applicants was formal action that was required to occur at a publicly noticed meeting).

33. Indeed, *Leach-Wells* is directly on point with the City’s actions here. In that case, the Bradenton City Council created a committee to screen responses to a request for proposals for a large city construction contract. *Id.* at 1169. The committee was to review the proposals and rank the top three firms. *Id.* Those firms would then make presentations to the City Council, which would select a winner from the short list. *Id.* However, the screening committee never held a public meeting; rather, it only sent its selections to the City Clerk who prepared a short list of the rankings. *Id.* Later, at the City Council meeting, only the three short-listed firms made presentations. *Id.* at 1169-70. The court said that “there is no question that the committee members’ individual evaluations were tallied and acted upon, albeit by the unilateral action of the city clerk, which resulted in three bidders being selected to make presentations to the Council.” *Id.* at 1171. Thus, the court concluded “that the short-listing was formal action that was required to be taken at a public meeting.” *Id.* Further, the court found it was well-settled that the government’s intent is irrelevant in a Sunshine Law case. *Id.*

34. Like in *Leach-Wells* and the other cases cited above, in this case, the decision by the Commission to whittle down the 93 applicants to just three names, resulting in the final short list of nine names, was official action that had to take place in the sunshine.

35. At its December 31st meeting, the Commission did not revisit the actions the Commissioners took outside of the sunshine in rejecting 84 of the 93 applicants. Rather, it perfunctorily accepted its prior acts and considered only the short list applicants. Thus, the Commission’s open meeting on December 31st did not “cure” the prior Sunshine Law violation. *See Zorc v. City of Vero Beach*, 722 So. 2d 891, 903 (Fla. 4th DCA 1998) (stating “only a full,

open hearing will cure a defect arising from a Sunshine Law violation. Such violation will not be cured by a perfunctory ratification of the action taken outside of the sunshine”); *see also Port Everglades Auth. v. International Longshoremen’s Ass’n, Local 1922-1*, 652 So. 2d 1169, 1171 (Fla. 4th DCA 1995) (concluding “a ‘cure’ did not occur because the governmental body did not reconvene ‘in the sunshine’ before the contract was awarded, and the government did not conduct a full, open hearing on the competing bidders for the contract before ratifying the selection committee’s recommendations); *Spillis Candela & Partners, Inc. v. Centrust Sav. Bank*, 535 So. 2d 694, 695 (Fla. 3d DCA 1988) (finding the governing body’s ratification at a public meeting of a committee’s report that was made outside the sunshine did not cure the Sunshine Law violation).

36. Because the City violated the Sunshine Law in conducting the search process for filling the vacancy on the Commission, its actions are void *ab initio*. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974) (stating a “[m]ere showing that the government in the sunshine law has been violated constitutes an irreparable public injury so that the ordinance is void *ab initio*” and concluding even though a zoning ordinance had been adopted at a public hearing, it was invalid because the zoning plan (upon which the ordinance was based) was formulated outside the sunshine); *see also Grapski v. City of Alachua*, 31 So. 3d 193, 200 (Fla. 1st DCA 2010) (concluding a city commission’s approval of minutes in violation of the Sunshine Law null was null and void *ab initio*).

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing, Jackson demands a judgment:

- a) Declaring that the City violated the Sunshine Law when it took official action on the applicants to fill the vacancy on the Commission without holding a properly noticed public meeting;

- b) Declaring the Commission's selection of Bryant to fill the vacancy on the Commission void *ab initio* due to the Sunshine Law violation;
- c) Declaring the City's swearing into office of Bryant null and void as a product of Sunshine Law violation;
- d) Declaring all of Bryant's official acts null and void and enjoining her from taking any further acts as Commissioner;
- e) Requiring the City to recoup any salary, benefits, or other compensation paid to Bryant;
- f) Declaring a vacancy has existed for more than twenty days for City Commission, Seat 1;
- g) Declaring that, under Section 14 of the City Charter, the Governor is to appoint someone to fill the vacancy on the City Commission;
- h) Awarding Jackson attorneys' fees under Florida Statutes Section 286.011(4);
- i) Assessing all costs against the City under Sections 57.014 and 86.081, Florida Statutes; and
- j) Directing any other relief this Court considers proper, including but not limited to injunctive relief.

Respectfully submitted,

/s/ C.B. Upton

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Attorney for Plaintiff Dr. Erwin D. Jackson

VERIFICATION

Under penalties of perjury, I, Dr. Erwin D. Jackson, declare that I have read the foregoing and that the facts stated in it are true to the best of my personal knowledge and belief.

By: _____

Dr. Erwin D. Jackson

STATE OF FLORIDA)
COUNTY OF LEON)

The foregoing was acknowledged before me this 2 day of January, 2019, by Dr. Erwin D. Jackson who is personally known to me or has produced the following identification

Elizabeth Rosario
Notary Public, State of Florida
My Commission Expires:

